

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF WEST VIRGINIA
AT CHARLESTON

RICHARD T.,

Plaintiff,

v.

Civil Action No. 2:22-cv-00495

MARTIN J. O'MALLEY,
Commissioner of Social Security,¹

Defendant.

MEMORANDUM OPINION AND ORDER

On October 28, 2022, plaintiff Richard T. initiated this action seeking judicial review of a final decision of the defendant Martin J. O'Malley, Commissioner of Social Security (the "Commissioner"), pursuant to 42 U.S.C. section 405(g). Pending is plaintiff's complaint (ECF No. 2), which was previously referred to the Honorable Dwane L. Tinsley, United States Magistrate Judge, for submission of proposed findings and recommendations ("PF&R"). Judge Tinsley filed his PF&R on February 28, 2024 (ECF No. 15), to which neither party objected.

On December 10, 2019, plaintiff applied for social security disability benefits. PF&R at 2. The Administrative

¹ Commissioner O'Malley was substituted in place of Acting Commissioner Kilolo Kijakazi following O'Malley's appointment on December 20, 2023.

Law Judge ("ALJ") determined that plaintiff, although not able to perform his previous work, was able to perform light, unskilled jobs readily available in the national economy, and denied plaintiff's disability claim. PF&R at 14. Plaintiff's claim was again denied upon reconsideration by the ALJ, and the Appeals Council denied plaintiff's request for review. PF&R at 2. On August 30, 2022, this denial became the final decision of the Commissioner. PF&R at 2-3.

Plaintiff contends that the ALJ did not sufficiently assess plaintiff's subjective symptoms, specifically, whether plaintiff's self-described limitations were consistent with, and supported by, the record as a whole. PF&R at 15-16. Judge Tinsley rejected this argument, finding instead that the ALJ considered plaintiff's self-described symptoms alongside the other evidence in the record and appropriately weighed the evidence for supportability and consistency, the detailed decision allows the court to trace his reasoning, and the decision is supported by the record. PF&R at 16-27. The PF&R thus recommends that plaintiff's request to reverse the Commissioner's decision be denied, the Commissioner's request to affirm his decision be granted, and the final decision of the Commissioner be affirmed. PF&R at 2.

The court need not review, under a de novo or any other standard the factual or legal conclusions of the magistrate judge as to those portions of the findings and recommendations to which no objection has been addressed. See Thomas v. Arn, 474 U.S. 140 (1985); see also 28 U.S.C. § 636(b) (1) ("A judge of the court shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made.") (emphasis added). Failure to timely file objections constitutes a waiver of de novo review and the plaintiff's right to appeal the order of the court. See 28 U.S.C. § 636(b) (1); Snyder v. Ridenour, 889 F.2d 1363, 1366 (4th Cir. 1989). Objections in this case having been due on March 13, 2024, and none having been filed, this matter may be duly adjudicated.

Accordingly, it is ORDERED that:

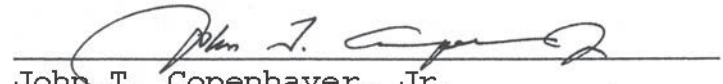
1. The findings made in the magistrate judge's Proposed Findings and Recommendations be, and hereby are, ADOPTED by the court and incorporated herein;
2. The plaintiff's request to reverse the Commissioner's decision be, and it hereby is, DENIED;
3. The Commissioner's request to affirm his decision be, and it hereby is, GRANTED;

4. The Commissioner's final decision be, and it hereby is, AFFIRMED; and

5. This civil action be, and it hereby is, DISMISSED from the docket of this court.

The Clerk is directed to transmit copies of this order to all counsel of record, any unrepresented parties, and the United States Magistrate Judge.

ENTER: March 18, 2024


John T. Copenhaver, Jr.
Senior United States District Judge